

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

)	
)	
In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
)	

**COMMENTS OF
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

Rhett Dawson
President
Information Technology Industry Council
1250 I Street, NW
Suite 200
Washington, DC 20005
(202) 626-5744

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

)	
)	
In the Matter of)	
)	
IP-Enabled Services)	WC Docket No. 04-36
)	
)	

**COMMENTS OF
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

The Information Technology Industry Council (ITI) welcomes the opportunity to provide comments in this matter of great importance to the information technology sector. ITI represents the nation’s leading information technology companies, including computer hardware and software, Internet services, and wireline and wireless networking companies. ITI’s members are at the forefront of information technology and are deeply involved in broadband services. ITI is the voice of the high tech community, advocating policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, protect consumer choice, and enhance the global competitiveness of its member companies.

INTRODUCTION

As the Commission notes in its Notice of Proposed Rulemaking (NPRM), “the Internet has transcended historical jurisdictional boundaries to become one of the greatest drivers of consumer choice and benefit, technical innovation, and economic development

in the United States in the last ten years.”¹ The phenomenal growth of the Internet can be directly attributed to the FCC’s policy of minimal regulation of the Internet and the services provided over it.² This policy has served as the catalyst for many of the innovative products ITI’s member companies have developed and retention of this policy will be instrumental in the continued growth of this sector.

ITI believes that IP-enabled services such as Voice over Internet Protocol (VoIP) have the potential to transform the telecommunications, cable, and high tech industries and achieve the long-awaited goal of true competition among providers of telecommunications services. In that a VoIP service is infrastructure independent (some VoIP services in fact do not even touch the Internet at all), it not only demonstrates the convergence of voice, video, and data but also raises complex regulatory questions with respect to the application of existing rules to infrastructure and service providers. Further, ITI views VoIP as still having a vast reservoir of unfulfilled potential and that the realization of its potential is best served by little, if any, regulation. While the Internet may have matured to a certain degree, in large part VoIP remains in its infancy and should not be subjected to outdated regulations that would hinder its progress.

With respect to IP-enabled services, ITI submits that the FCC should focus only on those services that present difficult questions. Thus far, only voice services have raised any questions that could possibly lead to the need for regulation. Additionally, there is some question as to whether the FCC has jurisdiction over all varieties of IP services. For this reason, while the NPRM speaks to all IP-enabled services, ITI will focus these comments on VoIP specifically. In this regard, ITI has developed a set of

¹ *IP-Enabled Services, Notice of Proposed Rulemaking*, 19 FCC Rcd. 4863 ¶ 1 (2004) (NPRM).

² NPRM at ¶2.

principles that it believes provide the framework for a regulatory scheme which will advance IP telephony and allow consumers to realize all of its benefits.³ If implemented the principles will help foster innovation, stimulate broadband demand, improve telecommunications networks, advance the economy, and bring about lower prices and enhanced communications services for consumers.

In accordance with its VoIP principles, the Commission's first priority should be to establish and assert federal jurisdiction over VoIP services. Second, as the Commission examines the issues created by the advancement and proliferation of IP-services, it should be guided by an intent to limit regulatory burdens as much as possible and should not apply legacy regulation to VoIP services. Third, before acting through regulation the Commission should first allow providers to meet and advance the long-standing public interest objectives associated with telecommunications services including emergency response, disability access, and law enforcement assistance. Fourth, with respect to the universal service fund, the FCC should not subject VoIP to such requirements prior to fundamental reform of its universal service fund and intercarrier compensation policies. Fifth, if the Commission determines regulations are necessary for VoIP, those regulations should acknowledge that variations within VoIP offerings may require unique application of those rules or exemption from the rules entirely.

ARGUMENT

I. The Commission Should Assert Federal Jurisdiction Over VoIP Services

ITI believes that federal jurisdiction can and should be exercised by the Commission over VoIP services. The establishment of federal jurisdiction will provide

³ http://www.itic.org/policy/voip_principles.pdf

the certainty that encourages investment and promotes continued innovation. However, ITI also believes that the FCC's jurisdiction over VoIP is limited and that any regulations should therefore be narrowly tailored.

VoIP is by its very nature interstate and thus subject to federal jurisdiction. When information is broken down into packets it does not travel by a prescribed geographical route but rather follows the optimal route. Advancements in computing communications and the inherent portability of these services further complicate piecemeal, state-by-state, regulatory approaches by making it difficult if not impossible to distinguish between a local, national, or international call. As the Commission correctly notes, the design of these networks allows packets to defy any jurisdictional boundaries.⁴ Attempts to either apply existing regulations to VoIP or to establish a new regulatory scheme when clearly defined boundaries do not exist are likely to lead to illogical rules that harm the marketplace and stifle innovation. Rules that vary by jurisdiction, either at the state or local level, have the potential to prevent the full realization of all the benefits VoIP has to offer.

The assertion of federal jurisdiction by the Commission would also be in concert with the stated intention of Congress in Section 230 of the Communications Act in which it declared a national policy to promote the continued development of the Internet and to preserve a competitive free market for these services “unfettered by Federal or State regulation.”⁵ Accordingly, ITI urges the Commission to affirm that all VoIP services are interstate and subject to federal jurisdiction.

⁴ NPRM at ¶4.

⁵ See 47 U.S.C. §230(b)

II. The Commission Should Limit Any Regulatory Burdens

In just the past decade, the Internet has provided a path to unique services that offer Americans lower prices, more choices, and greater efficiencies. For the most part, all of them have emerged in a free market environment. Like the Commission and many others, ITI shares the view that VoIP holds incredible and still unrealized promise. For this reason ITI applauds the FCC's indications that it favors minimal regulation over such services. If the Commission finds it necessary to implement regulations, ITI believes that the Commission should establish a regulatory environment that fosters growth and that the Commission act only when necessary to correct market imperfections. ITI believes that in many cases the marketplace and the development of new technologies and services can resolve the policy questions raised by VoIP. Further, VoIP brings a unique factor that has not existed with other new technologies or industries, that is, VoIP providers generally have lower start-up costs than we are accustomed to seeing with new technologies. Generally, a taxed or over-regulated activity is likely to seek a more hospitable location, especially when the ability to move does not involve substantial costs. Accordingly, since many new VoIP related businesses can operate from anywhere in the world and serve customers anywhere in the world, the consequence of burdensome regulations could be the relocation of companies completely outside of the jurisdiction of the United States. Consequently, this would completely deprive the U.S. of any oversight of these services.

The Internet has been able to integrate itself into daily life in the United States in large part because of the intentional and wise decision of the Commission to avoid regulating it. Diverging from this path and moving toward a regulatory posture for VoIP

services would force providers and manufacturers to incur substantial compliance costs that could not only limit innovation but also prevent providers from implementing their own efficient alternatives to meet consumer demand because of procedures demanded by regulation.

ITI supports the development of IP-enabled technology and innovative new VoIP services because they will advance the deployment and adoption of broadband. Regulatory intervention at this stage could impede progress toward the President's goal of making broadband services available and affordable to everyone.⁶ The Commission's forward-looking approach has been a success and no compelling reason has been presented to diverge from that course, particularly now when the IT industry has demonstrated the beginnings of a recovery.

III. Continued Advancement of Public Interest Objectives

ITI believes that providers of VoIP services should remain committed to meeting the public interest objectives that have been a part of U.S. telecom policy for decades. These objectives include universal service, 911 or E911, disability access, and law enforcement intercept capability. Because some of the public interest objectives in our national telecommunications policy are not competition based, the normal workings of market forces may not always address these important areas.

That said, ITI believes that in each instance the Commission should carefully examine whether the obligations can be met on a voluntary basis and whether technology itself, through the operation of competitive markets, can meet public policy objectives

⁶See Remarks by President Bush in Albuquerque, New Mexico, 2004. ("We ought to have a universal, affordable access for broadband technology by the year 2007, and then we ought to make sure as soon as possible thereafter, consumers have got plenty of choices when it comes to purchasing the broadband carrier.")

before mandates are placed upon providers. For example, the efficiencies of VoIP may lessen the demand on the universal service fund rather than lead to shortfalls as many have hypothesized. Moreover, partnerships with public safety groups can also provide many of the solutions to difficult policy questions and revolutionize emergency response and medical care. Allowing cooperative efforts such as these to progress instead of reflexively imposing specific regulations will allow VoIP providers to develop the most efficient means of meeting or even exceeding the expectations relating to these important social obligations. ITI also suggests that reforming both the implicit subsidies contained in access charges and the explicit subsidies such as those contained in the current universal service fund contribution methodology could substantially reduce the underlying pressures to regulate VoIP. Successfully reforming these subsidy systems would enable the United States to achieve the goal of a competitively neutral, transparent, and explicit funding system as envisioned by the 1996 Telecommunications Act.

Finally, while VoIP may appear to bear a strong resemblance to traditional circuit switched voice telephony, it is much more than that. Online services associated with video game consoles can operate on a VoIP platform, as can instant messaging services. What these examples show is that if the Commission decides that some regulations are needed, those regulations may not necessarily apply to all VoIP services. The Commission's regulations as they relate to the social obligations discussed in this section should therefore be limited to those VoIP applications that resemble traditional telephony.

IV. Conclusion

It is clear that a consensus is forming that VoIP will dramatically alter telecommunications as we now know it. What is not as clear is how those changes will occur and the impact they will have on the traditional providers of voice and data services or on the new entrants to the market. Those questions remain unanswered and for this reason ITI urges the Commission to proceed cautiously, with limited regulation exercised under its federal jurisdiction, and to craft narrowly tailored regulation only when necessary to meet those needs of consumers that cannot be met either voluntarily by providers or through market forces.

Respectfully submitted,

Information Technology Industry Council

By: Rhett Dawson, President

Nick G. Kolovos
Director and Counsel, Government Relations

Information Technology Industry Council
1250 I Street, NW
Suite 200
Washington DC 20005
202-626-5744

May 28, 2004